

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER RODRIGUEZ,

Plaintiff,

-against-

CITY OF NEW YORK; CAPTAIN MACK;
CORRECTION OFFICER JOHN,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 7/18/2022

21-CV-1384 (GHW)

ORDER

GREGORY H. WOODS, United States District Judge:

On July 18, 2022, the Court held a conference to discuss Defendant's July 11, 2022 motion to compel. The Court had previously ordered Plaintiff to respond to the discovery requests in that motion. Dkt. No. 45. Minutes before the July 18, 2022 conference was scheduled to begin, the Court received word from the Elmira Correctional Facility that Plaintiff had been produced for the July 18, 2022 conference, but refused to participate. Accordingly, the Court adjourned the conference.

That conference is adjourned to Thursday, July 21, 2022 at 3:00 p.m. Accordingly, it is ordered that the Warden or other official in charge of the Elmira Correctional Facility to produce Peter Rodriguez, #22B2287, on July 21, 2022 no later than 3:00 p.m., to a suitable location within the Elmira Correctional Facility that is equipped with a telephone, for the purpose of participating by telephone in a conference with the Court and defense counsel.

If this time and date presents an inconvenience, the Warden or the Warden's designee should promptly inform Chambers by calling the Courtroom Deputy at (212) 805-0296. Defense counsel must: (1) send this order to the Warden immediately; (2) contact the correctional facility identified above to determine the telephone number at which the plaintiff will be reachable at the time and date of the conference; and (3) telephone the Court with the plaintiff on the line at

the time and date of the conference. The parties are directed to the Court's Emergency Rules in Light of COVID-19, which are available on the Court's website, for the dial-in number and other relevant instructions. The parties are specifically directed to comply with Rule 2(C) of the Court's Emergency Rules.

Plaintiff is ordered to participate in that conference. The Court reminds Plaintiff that he is required to comply with the Court's orders. Plaintiff has now failed to comply with at least two of the Court's orders: he has failed to produce responses to Defendant's discovery requests, as ordered by the Court on May 20, 2022, and failed to attend the July 18, 2022 conference. If Plaintiff continues to fail to comply with the Court's orders—including by failing to attend the July 21, 2022 conference—the Court expects to dismiss this case under Federal Rule of Civil Procedure 41(b). Rule 41(b) provides, in relevant part, that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). “Although the text of Fed. R. Civ. P. 41(b) expressly addresses only the case in which a defendant moves for dismissal of an action, it is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

The Clerk of Court is directed to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: August 18, 2022
New York, New York



GREGORY H. WOODS
United States District Judge